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CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL ANGEL RIVAS-GARCIA,

Defendant - Appellant.

No. 05-50366

D.C. No. CR-04-583-SVW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Stephen V. Wilson, District Judge, Presiding

Submitted November 8, 2005<sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges

Miguel Rivas-Garcia appeals his sentence imposed following his guilty plea to being an illegal alien found in the United States after deportation, in violation of 8 U.S.C. § 1326(a). He contends that *Almendarez-Torres v. United States*, 523

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S. 224 (1998), is no longer good law and that the district court violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b) and § 2L1.2(b)(1)(A)(ii) of the advisory Sentencing Guidelines based on a non-jury fact finding regarding his prior commission of an aggravated felony. This contention is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005).

**AFFIRMED.**